EV 04-0080-C T/H Rose v Tell Cort-Troy Twp Sch
Judge John D. Tinder Signed on 7/28/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

BRENDA ROSE,	)	
	)	
Plaintiff,	)	
vs.	)	NO. 3:04-cv-00080-JDT-WGH
	)	
TELL CITY-TROY TOWNSHIP SCHOOL	)	
CORPORATION BOARD OF EDUCATION,	)	
	)	
Defendant.	)	

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BRENDA ROSE,	)	
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Plaintiff,	)	
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vs.	)	3:04-cv-080-JDT-WGH
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TELL CITY-TROY TOWNSHIP SCHOOL CORPORATION BOARD OF EDUCATION,	)	
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Defendant.	)	

ENTRY ON MOTION FOR SUMMARY JUDGMENT (DKT. NO. 24)[1]

Brenda Rose is a high school math teacher who has brought suit against the school corporation she works for, Tell City-Troy School Corporation ("TTSC"), alleging discrimination based upon gender. TTSC has filed a motion seeking summary judgment because, it says, Rose has not been damaged or suffered an adverse employment action. For the reasons discussed in this entry the court finds merit in the motion filed by TTSC.

[1] This Entry is a matter of public record and will be made available on the court's web site. However, the discussion contained herein is not sufficiently novel to justify commercial publication.

A. Factual Background[2]

Rose has been an employee of TTSC for twenty-six years. For the last twelve years she has taught math at the high school. She complains that for the 2003-2004 school year she received less favorable class assignments than did male math teachers at the high school.[3] In addition to Rose, David Goffinet, David Alvey and Steve Whitaker taught math classes at the high school that year. Goffinet has less seniority

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[2] The Local Rules of this district require the moving party to include in a supporting brief "a section labeled 'Statement of Material Facts Not in Dispute' containing the facts potentially determinative of the motion as to which the moving party contends there is no genuine issue." S.D. Ind. L.R. 56.1(a). The opposing party is to file a response brief which "shall include a section labeled 'Statement of Material Facts in Dispute' which responds to the movant's asserted material facts by identifying the potentially determinative facts and factual disputes which the nonmoving party contends demonstrate that there is a dispute of fact precluding summary judgment." S.D. Ind. L.R. 56.1(b). "For purposes of deciding the motion for summary judgment, the court will assume that the facts as claimed and supported by admissible evidence by the moving party are admitted to exist without controversy, except to the extent that such facts: are specifically controverted in the opposing party's 'Statement of Material Facts in Dispute'. . . ." S.D. Ind. L.R. 56.1(e).

While Plaintiff, as the opposing party here, did not include a section in her response brief entitled "Statement of Material Facts in Dispute," she did include a section entitled "Relevant Facts Precluding Summary Judgment." However, she spends little if any time in this section attempting to describe those particular facts set out by Defendants which she disputes. The clear intent of the Local Rule is to have the parties help the court focus its attention on the key material facts and whether or not they are in dispute. Failing to specify what material facts are truly in dispute is not only ineffective from an adversarial point of view, but such a failure also risks the court simply adopting the facts as set forth by the moving party because of the Local Rule violation. Indeed, where it is unclear to the court whether or not Plaintiff in this case takes issue with a particular fact set forth by the Defendants, the court will assume the fact as alleged by the Defendants is admitted.

[3] Plaintiff's Complaint contains much less defined and broader allegations of discrimination than just teaching assignments in 2003-2004. However, in her brief in response to the summary judgment motion Plaintiff has indicated that she is limiting the focus of her Complaint to the 2003-2004 class schedule.

as a math teacher at the high school than does Rose, Alvey has more, and Whitaker taught only lower level math courses based upon a waiver of certification granted by the State. Rose does not assert discrimination with respect to her 2004-2005 class schedule and is time barred from asserting any claim for discrimination prior to December 24, 2002.

Starting with the class that requires that the student have the most previous math experience and descending to the class with the least math prerequisite, the math classes taught at the high school during the 2003-2004 school term were as follows:

Trigonometry/Calculus
Pre-Calculus
Algebra II
Geometry
Algebra I
Business Math
Pre-Algebra
Math Lab

That year, Rose taught three sections of Pre-Algebra, two sections of Algebra I and one section of Geometry. She complains that Goffinet and Alvey taught all the higher level courses, despite her request that she be allowed to teach some of the higher level courses.

Dale Stewart was the principal at the high school and had the final say on which teachers would teach which classes. His procedure for teacher class assignments was to allow the teachers in a department to try to agree upon a class assignment schedule for their given curriculum and, if they were able to come to a consensus he would sign

off on that agreement, unless he felt strongly about who should teach a particular class. However, if no agreement was reached within the department he would take input and then make the final decision himself. According to all, the math department never could come to a consensus and definitely did not do so for the 2003-2004 school year. Though the record is not clear in terms of the exact input Stewart received from each of the math teachers prior to making assignments for the 2003-2004 school year, there is no question that Rose let it be known that she wanted to teach higher level courses and the others felt that it would not be in the best interests of the students to have her teaching the higher level courses because there was doubt with regard to the sufficiency of her knowledge base and ability to explain things to students. Based upon the input and upon his own assessment of skills and student rapport, Stewart chose not to give Rose assignments to teach the three highest level courses.

Rose complains that the lack of teaching assignments for upper level courses has curtailed the joy of teaching and limited her progress, insofar as those that teach the upper level courses tend to get reassigned those same courses each year. Rose believes she would enjoy teaching more if she were allowed to teach the more motivated students that everyone agrees tend to take the tougher math courses. She admits that there is no difference in pay, benefits or promotion potential based upon the level of math course that she teaches and that it is important to further the education of each student at the high school. However, she believes she has diminished responsibilities as compared to the male math teachers.

B. Standard of Review

Summary judgment is only to be granted if there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). To determine whether any genuine fact exists, the court examines the pleadings and the proof as presented in depositions, answers to interrogatories, admissions, and affidavits made a part of the record. *First Bank & Trust v. Firstar Info. Servs. Corp.*, 276 F.3d 317 (7th Cir. 2001). It also draws all reasonable inferences from undisputed facts in favor of the non-moving party and views the disputed evidence in the light most favorable to the non-moving party. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242 (1986). However, the non-moving party may not rest upon mere allegations in the pleadings or upon conclusory statements in affidavits; rather he must go beyond the pleadings and support his contentions with properly admissible evidence. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). Only competing evidence regarding facts that might affect the outcome of the suit under the governing law will preclude the entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). And, if the nonmoving party fails to establish the existence of an element essential to his case, one on which he would bear the burden of proof at trial, summary judgment is properly granted to the moving party. *Ortiz v. John O. Butler Co.*, 94 F.3d 1121, 1124 (7th Cir. 1996).

C. Analysis

Rose lacks any direct evidence of disparate, discriminatory treatment which leaves her with the burden of building her case utilizing the indirect method of proof. In utilizing this approach, Rose must establish that 1) she is a member of a protected class or was engaged in protected activity (such as registering a complaint), 2) in terms of her job performance, she met the employer's legitimate expectations, 3) her employer took adverse employment action against her, and 4) her employer treated more favorably similarly situated employees outside of the protected class or who did not make complaints of discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *Patt v. Family Health Sys., Inc*., 280 F.3d 749, 752 (7th Cir. 2002). The *McDonnell Douglas* template calls for the defendant employer to articulate a legitimate non-discriminatory reason for its action if the plaintiff meets her obligation of establishing the four elements of her prima facie case, but that will not be an issue of concern here, as TTSC has limited its challenge to the third element of the prima facie showing. In short, TTSC argues that not being allowed to teach the classes she would prefer to teach does not suffice to constitute an adverse employment action taken against Rose.

An adverse employment action is a material change in employment status such as hiring, firing, failure to promote, reassignment that includes significantly different or diminished responsibilities, or a significant change in pay or benefits. *Burlington Indus., Inc. v. Ellerth,* 524 U.S. 742, 761 (1998); *Herron v. DaimlerChrysler Corp.*, 388 F.3d 293, 300 n.1 (7th Cir. 2004). Not everything that displeases or annoys an employee amounts to an adverse employment action. *Smart v. Ball State Univ.*, 89 F.3d 437, 441

(7th Cir. 1996). It would hardly be appropriate for the courts to wade into the workplace dispensing jurisprudence each time an employee had a gripe about a job assignment. Something more substantive than personal dissatisfaction with an employer's actions is necessary to have a cognizable disparate treatment case. *See Traylor v. Brown*, 295 F.3d 783, 789 (7th Cir. 2002) (not allowing female highway department employee to perform clerical and black smithing duties was not an adverse employment action); *Kersting v. Wal-Mart Stores, Inc*., 250 F.3d 1109, 1118-1119 (7th Cir. 2001) (assignment to a less desirable work area not an adverse employment action); *Krause v. City of LaCrosse*, 246 F.3d 995, 1000 (7th Cir. 2001) (neither move to back of office or receipt of letter of reprimand found to be an adverse employment action); *Place v. Abbott Labs.*, 215 F.3d 803, 810 (7th Cir. 2000) (transfer to essentially equivalent position that was less desirable to plaintiff was not an adverse employment action).

Here, Rose has offers nothing to establish that this is an issue that goes beyond her personal preference. She argues that teaching the lower level classes is tantamount to having been assigned work with diminished responsibilities. However, that is totally inconsistent with the notion, seemingly held by all the teachers and administrators deposed in this matter, that no student is less important than any other when it comes to advancing their education. Further, there is no evidence that Rose has ever been promised, or even took her job under the assumption, that she would have the ability to choose which classes she would teach. The court does not doubt the sincerity of Rose in articulating her displeasure with the class assignments she received. However, without diminishing that personal displeasure, the federal courts

are not the venue for arbitrating competing employee preferences where no direct evidence of discrimination exists.

D. Conclusion

Rose has failed to establish a prima facie case of disparate treatment because she has not demonstrated that she was subject to an adverse employment action. Consequently, TTSC is entitled to summary judgment.

Defendant's Motion For Summary Judgment (Dkt. No. 24) will be **GRANTED**. Final judgment will be separately entered in favor of Defendant.

ALL OF WHICH IS ENTERED this 28th day of July 2005.

John Daniel Tinder, Judge
United States District Court

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